

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

IN RE:

JAMES M PAUL
aka JAMES PAUL
aka JAMES MICHAEL PAUL

CASE NO 9:13-bk-05229-FMD
CHAPTER: 7

CHARLENE F. PAUL
aka CHARLENE FAE PAUL

Debtors

MOTION FOR RELIEF FROM AUTOMATIC STAY

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

PURSUANT TO LOCAL RULE 2002-4, THE COURT WILL CONSIDER THIS MOTION, OBJECTION, OR OTHER MATTER WITHOUT FURTHER NOTICE OR HEARING UNLESS A PARTY IN INTEREST FILES AN OBJECTION WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE OF THIS PAPER. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER, YOU MUST FILE YOUR OBJECTION WITH THE CLERK OF THE COURT AT SAM M. GIBBONS UNITED STATES COURTHOUSE, 801 N. FLORIDA AVENUE, SUITE 555, TAMPA, FL 33602, AND SERVE A COPY ON THE MOVANT'S ATTORNEY, WAYNE B. SPIVAK, ESQ., ALBERTELLI LAW, PO Box 23028, TAMPA, FL 33623.

IF YOU FILE AND SERVE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT MAY SCHEDULE A HEARING AND YOU WILL BE NOTIFIED. IF YOU DO NOT FILE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE GRANTING OF THE RELIEF REQUESTED IN THE PAPER, WILL PROCEED TO CONSIDER THE PAPER WITHOUT FURTHER NOTICE OR HEARING, AND MAY GRANT THE RELIEF REQUESTED.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Bank of America, N.A. ("Movant"), by and through its undersigned counsel, and moves for relief from the automatic stay, pursuant to 11 USC §362(d). In support thereof, Movant states as follows

1. On April 23, 2013 the Debtors filed for relief under Chapter 7 of the United States Bankruptcy Code.

2. Jurisdiction in this cause is granted to the Court, pursuant to 28 U.S.C. §1334, 11 U.S.C. §362 and all other applicable rules and statutes affecting the jurisdiction of the Court generally.

3. On December 29, 2005, James M Paul and Charlene P Paul executed and delivered a promissory note and mortgage securing payment of the note to Wells Fargo Bank, N.A.. See attached composite Exhibit "A".

4. The mortgage secures the following real property located in LEE County, Florida:

UNIT 13-03, PHASE 6, VIVALDI AT COSTA DEL LAGO CONDOMINIUM, CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICIAL RECORDS BOOK 4573, PAGES 1641 THROUGH 1750, INCLUSIVE, AS AMENDED, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA

aka: 10761 VIVALDI COURT #1303, FORT MYERS, FL, 33913

5. The property is not claimed as exempt on Schedule C, and is surrendered in the Statement of Intention.

6. The value of the collateral pursuant to Schedule D is \$1,112,203.00.

7. The loan is in default. The contractual due date is June 1, 2010. The unpaid principal balance is \$873,400.00. When considering a second mortgage on this property in the amount of \$463,942.00 as shown on Schedule D, the total debt secured by the property exceeds the value of the collateral. An Affidavit in Support of the Motion for Relief from Stay is attached as part of Composite Exhibit "A".

8. It would be inequitable to permit the Debtors to retain the collateral with no equity or payments as adequate protection, for property surrendered and not necessary for an effective reorganization.

9. If Movant is not permitted to enforce its security interest in the collateral or provided with adequate protection, it will suffer irreparable injury, loss and damage.

WHEREFORE, Movant respectfully requests the Court enter an order:

- a. terminating the automatic stay;
- b. permitting Movant to take any and all steps necessary to exercise any and all rights it may have in the collateral described herein;

- c. allowing Movant to gain possession of said collateral; and
- d. granting such further relief as the Court deems just and appropriate.

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via electronic and/or Regular U.S. Mail to the parties listed on the attached service list, this 7th day of June, 2013.

SERVICE LIST

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Miromar Lakes, FL 33913

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By: /s/ Wayne B. Spivak, Esq.
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